

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 02-1398

United States of America,

Appellee,

v.

Jimmy Lee Stuckey, Jr.,

Appellant.

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* Appeal from the United States

* District Court for the

* Eastern District of Arkansas.

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* [UNPUBLISHED]

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Submitted: April 17, 2002

Filed: April 30, 2002

Before LOKEN, BYE, and RILEY, Circuit Judges.

PER CURIAM.

In November 2000, Jimmy Lee Stuckey, Jr., was sentenced to 51 months imprisonment to be served concurrently with an undischarged military sentence. A year later, Stuckey filed a motion with the district court entitled "NUNC PRO TUNC." The motion sought jail credit for the time Stuckey spent in custody, prior to the date he was first sentenced in federal court, for violating the parole on his military sentence. The district court dismissed the motion as frivolous, and Stuckey appealed.

We view Stuckey's "NUNC PRO TUNC" motion as a request for habeas relief under 28 U.S.C. § 2241 filed in the wrong district court (Stuckey is incarcerated in Beaumont, Texas) and without exhausting the Bureau of Prisons' administrative remedies. We therefore affirm the district court's dismissal of Stuckey's motion, but modify the district court's order to reflect a dismissal without prejudice for failure to exhaust administrative remedies, rather than a dismissal based on frivolity. We expressly decline to address the merit or lack thereof of Mr. Stuckey's motion, so that Stuckey remains free to file a § 2241 petition in the proper court after exhausting his administrative remedies. See United States v. Chappel, 208 F.3d 1069, 1069-70 (8th Cir. 2000); United States v. Sithithongtham, 11 Fed. Appx. 657, 658 (8th Cir. 2001).

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.